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Joint written statement* submitted by the Association for Progressive Communications (APC), a non-governmental organization in general consultative status, American Civil Liberties Union, Amnesty International, Human Rights Watch, International Federation for Human Rights Leagues, non-governmental organizations in special consultative status, Article 19 - The International Centre Against Censorship, non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Call to establish a UN Special Rapporteur on the right to privacy*

At the 28th ordinary session, the Human Rights Council has the opportunity to create a new mandate of UN Special Rapporteur on the right to privacy, thereby strengthening the protection and promotion of the right to privacy at the international level and enabling the Council to play a leading role in this respect.

The UN General Assembly, the UN High Commissioner for Human Rights and existing special procedure mandate holders have all recognized the pressing need for continuous, systematic and authoritative guidance on the scope and content of the right to privacy as enshrined in Article 12 of the Universal Declaration on Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR.)[1] Significantly, all of them have identified the need to monitor the ongoing implementation of the right to privacy.

During the September 2014 Human Rights Council's panel discussion on the right to privacy in the digital age many states and other stakeholders also emphasized the need for sustained and systematic analysis, research, and monitoring on the right to privacy.[2]

The creation of a Special Rapporteur on the right to privacy would respond to such a need. It would also be a logical, incremental step to the Human Rights Council's engagement on this issue and it would ensure that the right to privacy remains on the Council's agenda and engages the level of priority ascribed by the Council to other human rights.

A Special Rapporteur would play a critical role in furthering common understandings on the right to privacy and provide a considered and substantive interpretation of the right across a variety of settings, drawing on the input of all stakeholders. The mandate holder would also provide states and other stakeholders with much needed authoritative guidance and technical assistance to support them in fulfilling their obligations to respect and protect the right to privacy.

Significantly, a Special Rapporteur would monitor and publicly report, in an on-going and systematic way, on states' implementation of their international obligations in relation to the right to privacy; consider impact by actions and inactions of non-state actors; independently investigate reports of violations wherever they may occur, including individual cases; and make recommendations to governments and other actors to strengthen the protection of individual's right to privacy.

Within the UN system, a Special Rapporteur would enable the Human Rights Council to provide the necessary leadership in identifying and clarifying principles, standards, and best practices on the right to privacy.

Existing thematic Special Rapporteurs have expressed strong support for the creation of a dedicated special procedure on the right to privacy. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the promotion and protection of human rights and fundamental

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1 Article 12 of the UDHR states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." Article 17 of the ICCPR states: "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."

2 Summary of the Human Rights Council panel discussion on the right to privacy in the digital age, UN doc. A/HRC/28/39, 19 December 2014.

freedoms while countering terrorism have all addressed some aspects of privacy in their reports.[3] These reports help identify some of the challenges that modern communications technologies pose to the right to privacy. Significantly, they also point at the need for in-depth study of issues related to the effective protection of the right to privacy, as well as systematic monitoring and reporting, something that existing mandates centered on other themes cannot be expected to deliver. In fact, when presenting his report to the UN General Assembly in October 2014, the UN Special Rapporteur on counter-terrorism and human rights reaffirmed his support for the adoption by the Human Rights Council of a new special procedure mandate specifically addressing the right to privacy.[4]

Establishing a Special Rapporteur on the right to privacy would not only fill this institutional gap in human rights protection, it would allow for the development of a coherent and complementary approach to the interaction between privacy, freedom of expression, and other human rights.

The UN General Assembly resolution on the right to privacy in the digital age - adopted by consensus on 18 December 2014 - encourages the Human Rights Council to consider the possibility of establishing a special procedure on the right to privacy.[5] We recommend that the Council takes up this invitation and establishes a Special Rapporteur with a mandate to provide guidance and monitor the implementation of the right to privacy as enshrined in Article 12 of the UDHR and Article 17 of the ICCPR, in all its aspects.

In recent years international attention on the issue of privacy has tended to focus on the growth of digital communications and the parallel growth of states' and companies' capacity to interfere with individual's privacy in the context of digital communications and state digital surveillance. However, the right to privacy covers a range of other issues that are not currently within the purview of existing special procedures' mandates. Limiting the mandate of a new Special Rapporteur to privacy issues related to modern communications in the digital sphere would fail to recognize the need to respect and protect the right to privacy in all circumstances. A narrow mandate would likely result in fragmentation of the protection afforded to the right to privacy.

To effectively fulfill its role, we recommend that the Human Rights Council mandates the Special Rapporteur on the right to privacy to perform the full range of functions usually envisaged by the Council for other existing thematic special procedures, such as documenting best practices; receiving and seeking information from states, civil society, business enterprises, individuals and other stakeholders; carrying out country visits; leading and participating in consultation with relevant stakeholders; making recommendations to States and other stakeholders on the implementation and realization of right to privacy; and reporting periodically to the Council and the General Assembly.

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* Brennan Center for Justice, Center for Democracy and Technology, Electronic Frontier Foundation, Privacy International, NGO(s) without consultative status also share the views expressed in this statement.

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3 See, for example, UN Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report to the UN Human Rights Council, UN doc. A/HRC/23/40, 17 April 2013 and UN Special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the UN General Assembly, UN doc. A/69/397, 23 September 2014.

4 Third Committee of the UN General Assembly, meeting of 23 October 2014, http://www.un.org/press/en/2014/gashc4109.doc.htm

5 See UN General Assembly resolution on the right to privacy in the digital age, 18 December 2014, where the General Assembly "*encourages* the Human Rights Council to remain actively seized of the debate, with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy, and to consider the possibility of establishing a special procedure to that end." (UN doc. A/RES/69/166)